IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8591 OF 2005

Anwar Gaffar Shah Petitioner

versus

The State of Maharashtra & anr. Respondents

ALONG WITH
WRIT PETITION NO.8757 OF 2005

Anwar Gaffar Shah Petitioner

versus

The State of Maharashtra & anr. Respondents

Mr.A.R.Shaikh for petitioner.
Mr.R.M.Patne, AGP.
Mr.Santosh Patil and D.B.Savant for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 1st February 2006

PC :

1. Rule. Learned AGP and Shri Sawant waive service. Heard forthwith by consent.

2. Learned counsel appearing for parties agree that these petitions raise common questions of fact and law and therefore, can be disposed of by

a common order.

3. The petitioner in these petitions challenges the order passed on 29th October 2005 by the Additional Commissioner, Nashik Division, in Gram Panchayat Appeal No.43 of 2005. By this order, the Additional Commissioner confirmed the order dated 27th September 2005 passed by the Additional Collector, Nashik.

4. The complaint that was filed against the petitioner by second respondent in these petitions is that he has been elected as a Gram Panchayat Member. The Gram Panchayat in question is Chandvad in Nashik District. It is alleged by the complainants that a false declaration was made by the petitioner while giving details of his family inasmuch as he has not declared and rather suppressed the fact that a fourth child was born after 12th September 2001 which is the period prescribed by Section 14(J-1) and proviso thereto of Bombay Village Panchayats Act, 1958. In other words, he has incurred disqualification and therefore, it should be directed that he ceases to be a Member of the concerned Panchayat.

5. The dispute does not appear to be about the

disclosure made by the petitioner insofar as his first three issues. However, it is alleged that fourth child was born on 21st September 2001 and entry pertaining to his birth is dated 27th September 2001. This child having been born after the stipulated date, the petitioner incurs disqualification straight way. It is alleged that the false declaration/affidavit submitted at the time of filing of nominations should be ignored and the petitioner be disqualified from continuing as Panchayat Member.

6. This complaint of the complainants was placed before the Additional Collector. The Additional Collector has adverted to the reply of the petitioner but has concluded that the fourth child is born on 21st September 2001. After 12th September 2001 an additional child is born in the family of the petitioner and the petitioner being father thereof, he stands disqualified. This finding is affirmed by the Additional Commissioner in appeal.

7. Shri Shaikh appearing for the petitioner has brought to my notice the fact that both, the Additional Collector as well as Commissioner, have relied upon an entry/endorsement in the

records maintained by the Gram Sevak, Chandvad who is the authority in-charge of registration of births and deaths in the said village. However, disputing correctness of this entry before the Additional Commissioner, the petitioner produced a certificate which was issued in his favour by Malegaon Municipal Council and more particularly signed by the Deputy Registrar, Registration of Births and Deaths of the said Council. In the said certificate it is clearly mentioned that fourth son Rahimsha was born on 17th July 2001. In his submission the first question, therefore, is that when this child is born within the time prescribed by the proviso to the aforesaid sub section, then the disqualification is not incurred at all. Secondly and in any event, he submits that the Additional Collector as well as the Commissioner were in error in relying upon the extracts produced by the Gram Sevak and other authorities without furnishing to the petitioner a copy thereof and allowing him to meet the contents of the same.

8. With the assistance of Shri Shaikh, Shri Patne as well as Shri Sawant appearing for one of the complainants, I have perused the impugned orders. I have also perused the certificate

which is issued on 6th June 2005 by Malegaon Municipal Council. In my view, there is much substance in the complaint of Shri Shaikh that if the authorities had decided to rely upon the extract produced by Gram Sevak of Chandvad as also birth entry maintained in the records pertaining to that village, then it was incumbent upon them to have furnished a copy of the same to the petitioner before taking into consideration contents thereof. Equally, I find substance in the contentions of Shri Shaikh that when a specific contention is raised before the Appellate Authority namely Additional Commissioner, Nashik not only disputing the correctness and authenticity of the certificate relied upon but additionally producing certificate issued by Malegaon Municipal Council, then it was incumbent upon him to have taken into consideration all such submissions and deal with them and pass a reasoned order. Ultimately, disqualifying a person who is elected to the Panchayat on the basis of a complaint made subsequently, as also seeking to falsify the contents of the affidavit/ disclosure made by the Returned Candidate at the time of filing nomination is a serious matter and has civil consequences. It is not just an issue between

the complainant and the returned candidate. It is a matter where the entire Electorate is concerned and it’s out come affects them as well. The authorities who have been chosen for deciding such issues, ought to be aware of their obligations and should afford full opportunity to the returned candidate as well as to the complainant in accordance with the principles of natural justice. Any materials which are sought to be relied upon, ought to be disclosed previously and parties should be given opportunity to dispute the contents thereof. All procedural laws are nothing but part and parcel of principles of natural justice. In the instant case, not only the Collector but also the Commissioner were in error in not giving an opportunity to the petitioner to meet the contents of the documents produced by the complainant and/or summoned by them as also not allowing the petitioner to substantiate his pleas on the strength of the certificate issued by Malegaon Municipal Council.

9. I have taken note of Shri Sawant’s contention that it was for the petitioner also to have raised these issues in the reply to the complaint as also by producing materials before the

Collector and the Additional Commissioner. If he has just relied upon a certificate and not made any other request nor has demonstrated that any prejudice is caused to him, then jurisdiction under Article 227 of the Constitution of India need not be exercised.

10. However, in my view, considering the nature of the proceedings it would be fair, just and proper to grant an opportunity to the petitioner as well as to the complainant to make good their respective cases once again. Hence, the orders under challenge are set aside. The complaints of respondent no.2 are restored to the file of Additional Collector for being dealt with afresh in accordance with law and after giving full opportunity to the petitioner as well as complainant. All contentions on merits are expressly kept open. The authorities should pass reasoned orders afresh without being influenced by the observations in the order under challenge which are set aside.

11. Parties to appear before the Additional Collector on or before 13th February 2006 and the Additional Collector shall thereupon decide the matter within a period of six weeks from the date

of appearance. Rule made absolute in the above terms, with no orders as to costs.

(S.C.DHARMADHIKARI, J.)